Cadywold. This language is, "The reason of the law is the essence and soul of the law."

In threading this maze of errors this note is already too long. It may close without further notice of the present state of the law as to the revocation of wills by marriage, than a reference to two recent cases reviewing the subject, *Hoy* v. *Hoy* 93 Miss. 732, and annotations in 25 L. R. A. N. S. 182 (1909), *Herzog* v. *Trust Co.* 67 Fla. 54, Ann. Cas. 1917 A 201, and annotations p. 203. E. C. G.

ALIENATION OF CONTINGENT REMAINDERS. The recent case of *Bisby* v. *Walker,* 169 N. W. 467, decided by the Supreme Court of Iowa November 23, 1918, is an interesting instance of an all too common lack of appreciation and understanding of the very fundamentals of property law.

Under the will of her grandfather B became entitled to a contingent remainder (at least the court treated it as such) in certain lands; the contingency upon which her taking depended was her being one of the surviving children of her mother at the time of the death of the life tenant, the testator's widow. During the continuance of the prior estate and therefore while her remainder was contingent B executed several mortgages, some describing the mortgaged property by metes and bounds and some as all her "right, title, and interest" in the devised lands. These mortgages all contained covenants for title or recitals indicating an intention to convey "absolute title in fee simple." While the remainder was still contingent and after the execution of all of the mortgages but one B went through bankruptcy and received the usual discharge. It was held, undoubtedly correctly so, that the mortgages were enforceable liens upon B's interest in the devised lands after the death of the life tenant, B having survived her.

At common law contingent remainders being considered in the nature of mere possibilities (see *Fulwood's Case,* 4 Co. 64b, 66b; *Lampet's Case,* 10 Co. 48 a) were deemed incapable of alienation by a conveyance at law, "otherwise than by way of estoppel by fine (or by a common recovery, etc.)" FEARNE, CONTINGENT REMAINDERS, *p. 537. As to the operation of estoppel in these cases see *Doe d. Christmas* v. *Oliver,* 10 B & C, 181. If, then, in Iowa contingent remainders such as B had in the principal case are incapable of conveyance except by the operation of an estoppel, it was necessary for the court to consider whether the mortgage deeds were such as to raise an estoppel and the effect thereon of a discharge in bankruptcy. Considerable space is taken up by the court in concluding that the mortgage deeds were such as to raise an estoppel. It is then concluded that the discharge in bankruptcy did not affect the inurement of the after acquired title, though no attention is given to the exceedingly interesting and nice point argued by PROFESSOR GRAY and disposed of by Mr. JUSTICE HOLMES for the court in *Ayer* v. *Philadelphia & B Face Brick Co.,* 159 Mass. 84. The bankruptcy discharge, so it was said, could not affect the mortgagee's rights, for the mortgage liens had fastened upon the property more than four months prior to the petition in bankruptcy!

Contingent remainders in England were made alienable by 8 & 9 Vict. c 106 (1845) the provision being a sweeping one. It is provided that "a contingent, an executory and a future interest, and a possibility coupled with an interest * * * whether the object of the gift or limitation of such interest or possibility be or be not ascertained * * * may be disposed of by deed." In this country statutory provisions to the same effect though generally not so explicit are common. See STIMSON, AM. ST. LAW, §1420. In Michigan the provision, essentially the same as in New York, provides that "Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession." HOWELL'S STATS. (2nd ed.) 10657. The remarkable thing about the principal case is that in Iowa it has been settled that the statute providing that "Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used," enables a contingent remainderman to make effective conveyances of the remainder. This was settled in *McDonald* v. *Bank,* 123 Iowa 413, in which the remainders in question were contingent in the same way as in the principal case. The *McDonald* case was cited by the court at the outset, with the statement that "The mortgages, then, were valid when executed," which statement of course is in keeping with the observation, referred to above, that the discharge in bankruptcy did not displace the pre-existing liens created by the mortgages. Without realizing that they had thus decided the case in the first two sentences stating the law applicable to the facts, the court went on to a consideration of the matter of inurement of after acquired title apparently being led astray by several earlier Iowa cases, which are cited, in which the question of inurement by estoppel was vitally important for the reason that the conveyances or mortgages were made at a time when the grantor or mortgagor had no interest in the premises, not even a contingent remainder.

It is held where contingent remainders are alienable that a mortgage thereof may be foreclosed even before the contingency is determined. *Peoples' Loan and Exchange Bank* v. *Garlington,* 54 S. C. 413. And this would seem entirely proper. R. W. A.

WITNESS—COMPETENCY OF AN ALLOPATHIC EXPERT IN THE FIELD OF HOMOEOPATHY—OPINION ON VERY FACT THE JURY MUST DETERMINE. *Van Sickle* v. *Doolittle,* (Ia., 1918), 169 N. W. 141, was an action for malpractice against a physician of the homœopathic school of medicine. Upon the trial, a physician of the allopathic school was called, and after testifying that he was unskilled in the science of homœopathy, was allowed to testify that the treatment shown to have been given to the patient by defendant, would produce no physiological effect, and that proper treatment required the giving of such medicines as would produce such effect. This was held error upon the ground that the defendant was called to treat the patient as a homœopathic physician and that his only obligation was to exercise such care and skill as was common to practitioners of that school of medicine, and the witness having been shown to be unskilled in the science of medicine as practiced by that school, was not qualified to speak as expert in the field in-